

OFFICE OF THE OHIO PUBLIC DEFENDER ANNUAL KAP NEWSLETTER

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WHAT IS KAP?

The Kids in Adult Prison (KAP) Working Group at the Office of the Ohio Public Defender includes a group of staff who meet regularly to work on issues that impact kids bound over and tried as adults in Ohio. This work includes policy, litigation, and parole. The Kids in Adult Prison Working Group believes that no child should be placed in an adult jail or prison, the number of children being transferred for adult prosecution should be significantly limited, and sentencing laws for children must comply with US and Supreme Court of Ohio decisions.



SB256 UPDATE

From May 2021 through October 4, 2022, 168 people have had an institutional parole hearing under SB256. Here's some quick data we have collected about those who have had a hearing:

- 121 people have seen the board before.
- 65 people had their first hearings.
- 23 people have been granted parole.
- 77 people were represented by attorneys from the Ohio Public Defender Office.
- 71 people were represented by private attorneys, pro-bono attorneys, and attorneys from county public defender offices.
- 39 people were not represented by attorneys.

"Many of these kids have not received the support and protection they needed and deserved. Incarcerating them for the rest of their lives stacks one atrocity onto another. SB256 is good public policy. It gives a second chance to Ohio's kids, some of whom were not even given a first chance. It is time for Ohio's juvenile offender laws to be accountable to Ohioans."

—Player's Coalition testimony in support of SB256

PENDING SUPREME COURT OF OHIO CASES

Throughout 2021 and 2022, the Supreme Court of Ohio heard arguments about many issues related to youthful offender sentencing and transfer from juvenile to adult court. In these cases, the Court was presented with the following questions:

- Can prosecutors criminally indict children on counts for which they failed to establish probable cause in juvenile court?
- Does a juvenile court commit an error when it decides that probable cause on a lesser offense equals probable cause for a greater offense?
- Can a child be transferred to adult court without a finding of non-amenable in juvenile court?
- Does the trial court violate the U.S. and Ohio Constitutions when it sentences a youthful offender to life in prison and fails to consider youthfulness at sentencing?

We have to wait and see how the Court decides these issues, whether they impact past cases, and how they might impact cases going forward.

In 2023, the Supreme Court of Ohio will hear additional cases that ask questions about the retroactivity of the *State v. Patrick* decision (which requires consideration of youth as a mitigating factor in sentencing), interrogation of children and teenagers, probable cause hearings in juvenile court, and what transfer issues can be raised on appeal after a guilty plea.

"What lies behind you and what lies in front of you, pales in comparison to what lies inside of you." *—Ralph Waldo Emerson*

HOPE IS HAPPENING AROUND THE COUNTRY

Adnan Syed was 17 when he was accused of killing his ex-girlfriend in Baltimore, Maryland. In 2000, he was convicted of murder and sentenced to life in prison. He maintained his innocence, and his story was featured in the first season of the popular podcast *Serial*, released in 2014. In 2016, a judge granted Mr. Syed a new trial, but he remained incarcerated. In 2018, the Maryland Court of Special Appeals agreed that he received ineffective assistance of counsel, but in 2019, Maryland's highest court overruled the lower court's decision and reinstated Mr. Syed's conviction. However, in March 2022, prosecutors agreed to new DNA testing. And, in September 2022, a judge vacated Mr. Syed's conviction at the request of the prosecutors. In October 2022, Baltimore prosecutors decided to drop all charges against Mr. Syed and he was finally able to walk out of prison.



In 2021, **Henry Montgomery** was released from a Louisiana prison at the age of 75, after serving almost six decades for a crime that happened when he was 17. In 1969, Mr. Montgomery was convicted of murder and sentenced to a mandatory life-without-parole sentence. In 2012, the U.S. Supreme Court held in *Miller v. Alabama* that mandatory life-without-parole sentences are unconstitutional for children. In 2016, Mr. Montgomery took his own case to the U.S. Supreme Court, which held in *Montgomery v. Louisiana* that all states are required to retroactively apply *Miller* to people who were kids when their crime occurred. The Montgomery decision requires states to provide people who were children at the time of their crime with a meaningful opportunity for release. After he won

in the U.S. Supreme Court, Mr. Montgomery was denied parole in 2018 and 2019. But, in November 2021, the Louisiana Board of Pardons and Committee on Parole voted unanimously to release him.

SENTENCING CASES

Incarcerated youthful offenders across the country continue to litigate questions related to sentencing. In August of this year, Michigan's Supreme Court issued decisions in four cases that impact young people and their sentences, including extending some protections to 18-year-olds. In November, Tennessee's Supreme Court issued a decision that held that the state's "automatic life sentence of 51 to 60 years for a juvenile homicide offense is an outlier in the nation."

While these cases only impact people in Michigan and Tennessee, it's great to see other states making big decisions on youthful sentencing.

FROM THE KAP WORKING GROUP

As we come to the end of calendar year 2022, members of the KAP Working Group hope this newsletter finds you well. Since the passage of SB256, 23 people have been paroled and several more are approved pending full board hearing, with more to come. We know there may still be setbacks and frustrations, but whether at the Statehouse, in court, or before the parole board, we will continue to advocate for positive change.

CORRECTING THE RECORD

In August 2022, DRC sent a Jpay message to everyone with a tablet in DRC. That message let people know that, beginning soon, institutional parole panel hearings conducted at DRC institutions will allow both your legal representative, if you have one, and an attorney from the county prosecutor's office, to virtually observe the hearing as it happens. As a condition of being allowed to observe the parole hearing, your attorney and/or the prosecuting attorney will not be permitted to speak or interrupt the proceedings or participate in any way.

This information did not clarify that SB256 institutional parole panel hearings are treated differently. While a prosecutor can still observe a SB256 institutional hearing, your attorney will still be able to make a statement on your behalf. Attorneys are given 15 minutes to present to the parole board on behalf of a person impacted by SB256.

RESOURCE

If you would like more information about the parole review process, or if you would like a resource to help you prepare for your parole review, you can request a copy of the **Parole Toolkit** by writing to the Office of the Ohio Public Defender, KAP Working Group, 250 E. Broad Street, Suite 1400, Columbus, OH, 43215.

If you know anyone who would like to be added to our mailing list, please let us know.